

30 Main Street, Suite 200
Pawtucket, RI 02860



**United States of America, Department of the Treasury
Internal Revenue Service
c/o U.S. Attorney's Office, Attention: Laurie F. Janson
100 Middle Street
East Tower, 6th Floor
Portland, ME 04101**



Consumer Hotline
844-856-6646
Phone:
401-217-8701

1080 Main Street, Suite 200, Pawtucket, RI 02860
ConsumerContact@brockandscott.com
www.brockandscott.com

Fax:
401-217-8702

January 4, 2022

United States of America, Department of the Treasury
Internal Revenue Service
c/o U.S. Attorney's Office, Attention: Laurie F. Janson
100 Middle Street
East Tower, 6th Floor
Portland, ME 04101

RE: **B&S File No.: 18-12846**
US Bank Trust National Association, Not In Its Individual Capacity But
Solely As Owner Trustee For VRMTG Asset Trust v. Stanley Tenpenny, *et*
al.
Property Address: 6 W Commonwealth Drive, Portland, ME 04103
Court Case No.: **PORSC-RE-2021-95**

Dear Ms. Jansen:

Enclosed please find a copy of a Summons and Complaint for the above-referenced matter.

Of Note: This is a Complaint For Reformation of Mortgage

Please complete your Acceptance of Service on behalf of the United States of America
Department of the Treasury - Internal Revenue Service.

Kindly return the original Acceptance to our office in the enclosed self-addressed envelope.

If you have any questions, please do not hesitate to contact us.

Respectfully,

Brock & Scott, PLLC

Enclosure

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
LOCATION OF PORTLAND
CIVIL ACTION
DOCKET NO.: PORSC-RE-2021-95

US BANK TRUST NATIONAL ASSOCIATION, NOT IN
ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR VRMTG ASSET TRUST

PLAINTIFF

v.

LUZ ESMERALDA TENPENNY A/K/A LUZ E.
TENPENNY A/K/A ESMERELDA TENPENNY; STANLEY
TENPENNY;

DEFENDANTS

TD BANKNORTH, N.A.; STATE OF MAINE, MAINE
REVENUE SERVICES; UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY-INTERNAL
REVENUE SERVICE; MIKE MCDONALD HEATING
SERVICE LLC

PARTIES-IN-INTEREST

Notice and Acceptance of Service

I, [print name] _____, Esquire, with an office located at [print
address] _____, am the attorney for

_____, and I am duly authorized by him/her/it/them to
accept service of the **Complaint for Reformation of Mortgage**, in the above entitled matter, in lieu of personal
service by Sheriff and I do hereby **ACCEPT** service of same.

I further represent that by accepting such service by mail, I hereby **WAIVE** all defenses relating to insufficiency
of service of process.

Dated at the City/Town of _____, Maine, this _____ day of the month of
_____, 20____.

SIGNATURE: _____

PRINT: _____

Bar#: _____

Attorney for

Print address and telephone:

MAINE JUDICIAL BRANCH

US BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY
AS OWNER TRUSTEE FOR VRMTG ASSET TRUST
PLAINTIFF

v.
LUZ ESMERALDA TENPENNY A/K/A LUZ E. TENPENNY
A/K/A ESMERELDA TENPENNY; STANLEY TENPENNY;
DEFENDANTS

Service on: United States of America, Department of the
Treasury-Internal Revenue Service c/o U.S. Attorney
At: 100 Middle Street, East Tower, 6th Floor,
Portland, ME 04101

"X" the court for filing:

☒ Superior Court ☐ District Court

County: CUMBERLAND

Location (Town): PORTLAND

Docket No.: PORSC-RE-2021-95

SUMMONS

M. R. Civ. P. 4(d)

The Plaintiff has begun a lawsuit against you in the ☐ District ☒ Superior Court, which holds sessions at
(street address) 205 Newbury Street, Ground Floor, in the Town/City of
Portland, County of CUMBERLAND, Maine. If you
wish to oppose this lawsuit, you or your attorney **MUST PREPARE AND SERVE A WRITTEN ANSWER** to the
attached Complaint **WITHIN 20 DAYS** from the day this Summons was served upon you. You or your attorney
must serve your Answer by delivering a copy of it in person, by mail, or by email to the Plaintiff's attorney,
whose name and address, including email address appear below, or by delivering a copy of it in person or by
mail to the Plaintiff, if the Plaintiff's name and address appear below. You or your attorney must also file the
original of your Answer with the court by mailing it to: Clerk of ☐ District ☒ Superior Court,
205 Newbury Street, Ground Floor, Portland, Maine 04101
(Mailing Address) (Town, City) (Zip)

before, or within a reasonable time after, it is served. Court rules governing the preparation and service of
Answers are found at www.courts.maine.gov.

IMPORTANT WARNING: If you fail to serve an answer within the time stated above, or if, after you answer,
you fail to appear at any time the Court notifies you to do so, a judgment by default may be entered against
you in your absence for the money damages or other relief demanded in the Complaint. If this occurs, your
employer may be ordered to pay part of your wages to the Plaintiff or your personal property, including bank
accounts and your real estate may be taken to satisfy the judgment. If you intend to oppose this lawsuit, do
not fail to answer within the requested time.

If you believe the plaintiff is not entitled to all or part of the claim set forth in the Complaint or if you believe
you have a claim of your own against the Plaintiff, you should talk to a lawyer. If you feel you cannot afford to
pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal
assistance.

Date (mm/dd/yyyy): 01/04/2022

Sonia J. Buck, Esq. #9847
Brock & Scott, PLLC
1080 Main Street, Suite 200
Pawtucket, RI 02860
(401) 217-8701 x2460
sonia.buck@brockandscott.com

(☒ Attorney for) Plaintiff

Address

Telephone

Email Address

(Seal of Court)

Brock H. Otis

Clerk

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable
accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

CONTAINS NONPUBLIC DIGITAL INFORMATION

MAINE JUDICIAL BRANCH

STATE OF MAINE

_____. County

On (date) _____, I served the Complaint (and Summons, and Notice Regarding Electronic Service) upon Defendant _____ by delivering a copy of the same at the following address:

☐ to the above-named Defendant in hand.

☐ to (name) _____, a person of suitable age and discretion who was then residing at Defendant's usual residence.

☐ to (name) _____, who is authorized to receive service for Defendant.

☐ by (describe other manner of service): _____

Date (mm/dd/yyyy): _____

Deputy Sheriff Signature

Printed Name

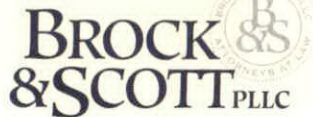
Agency

Costs of Service:

Service:	\$ _____
Travel:	\$ _____
Postage:	\$ _____
Other:	\$ _____
Total	\$ _____

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1080 MAIN STREET, SUITE 200
PAWTUCKET, RI 02860



1080 Main Street, Suite 200
Pawtucket, RI 02860



US POSTAGE PAID PITNEY BOWES



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0000371375 JAN 04 2022

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
LOCATION OF PORTLAND
CIVIL ACTION
DOCKET NO.: RE-20-

US BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY BUT
SOLELY AS OWNER TRUSTEE FOR
VRMTG ASSET TRUST.

PLAINTIFF

v.

LUZ ESMERALDA TENPENNY A/K/A
LUZ E. TENPENNY A/K/A
ESMERELDA TENPENNY; STANLEY
TENPENNY;

DEFENDANTS

TD BANKNORTH, N.A.; STATE OF
MAINE, MAINE REVENUE
SERVICES; UNITED STATES OF
AMERICA, DEPARTMENT OF THE
TREASURY-INTERNAL REVENUE
SERVICE; MIKE MCDONALD
HEATING SERVICE LLC

PARTIES-IN-INTEREST

COMPLAINT FOR REFORMATION OF MORTGAGE
TITLE TO REAL ESTATE IS INVOLVED
PROPERTY ADDRESS: 6 W Commonwealth Drive, Portland,
Cumberland County, Maine
MORTGAGE RECORDED IN CUMBERLAND COUNTY
REGISTRY OF DEEDS IN BOOK 24789 AT PAGE 187

NOW COMES the Plaintiff, US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust , by and through its attorneys, Brock & Scott, PLLC, and complains as follows:

PARTIES

1. Plaintiff, US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust, is an entity having a principal place of business located at c/o Fay Servicing, LLC, 425 South Financial Place, Suite 2000, Chicago, IL 60605.

2. Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny and Stanley Tenpenny; ("Defendants") are individuals who, upon information and belief, resides at 6 W Commonwealth Drive, Portland, ME 04103
3. TD Banknorth, N.A. ("Party-in-Interest") is an entity having a principal place of business located at One Portland Square, Portland, ME 04101.
4. State of Maine, Maine Revenue Services ("Party-in-Interest") is an entity having a principal place of business located at 24 State House Station, Augusta, ME 04333.
5. The United States of America, Department of the Treasury, Internal Revenue Service ("Party-in-Interest") is an entity having a principal place of business c/o Ashley E. Eiler, AUSA, U.S. Attorney's Office 100 Middle Street, 6th Floor, Portland, ME 04101.
6. Mike McDonald Heating Service LLC ("Party-in-Interest") is an entity having a principal place of business c/o Corporation Service Company, 45 Memorial Drive, Augusta, ME 04330.

FACTS

7. Defendant Luz Esmeralda Tenpenny is the owner of certain real property located at 6 W Commonwealth Drive, Portland, Cumberland County, Maine (the "Premises") by virtue of a deed from Stanley Tenpenny dated December 13, 2010, and recorded in the Cumberland County Registry of Deeds on December 17, 2010 in Book 28370 at Page 44. See also deed from Stanley Tenpenny to Stanley Tenpenny and Esmeralda Tenpenny dated January 21, 2004 recorded in Book 20812 at Page 309 of said Registry of Deeds. See also Abstract of Divorce Decree dated November 12, 2010 whereby Luz Esmeralda Tenpenny was awarded sole ownership of same property recorded in said Registry of Deeds in Book 28307 at Page 138. A copy of the Legal Description for the Premises is attached hereto as Exhibit A.
8. On or about December 19, 2006, Defendant Stanley Tenpenny executed and delivered to JPMorgan Chase Bank, N.A., a certain promissory note in the original principal amount of \$162,800.00 (the "Note"). Plaintiff is the current holder of the Note and is entitled to enforce the Note.
9. To secure the Note, on or about December 19, 2006, Defendant Stanley Tenpenny executed and delivered to JPMorgan Chase Bank, N.A. a mortgage (the "Mortgage") of the Premises, in the amount of \$162,800.00, which Mortgage was recorded in the Cumberland County Registry of Deeds in Book 24789 at Page 187; as affected by a Loan Modification Agreement dated October 8, 2010 modifying the unpaid principal balance of the loan to \$162,794.17.
10. Plaintiff is the current Mortgagee by assignment.
11. TD Banknorth, N.A. claims, or may claim, an interest in the Premises by virtue of a mortgage given by Stanley B. Tennypenny and Luz E. Tenpenny, in the original

principal amount of \$14,925.00, recorded in Book 25514 at Page 315 of the Cumberland County Registry of Deeds.

12. TD Banknorth, N.A. claims, or may claim, an interest in the Premises by virtue of a mortgage given by Stanley Tenpenny and Esmeralda Tenpenny, in the original principal amount of \$83,085.79, recorded in Book 25760 at Page 42 of the Cumberland County Registry of Deeds.
13. The State of Maine, Maine Revenue Services claims or may claim, an interest in the Premises by virtue of a Notice of State Tax Lien against Luz E. Tenpenny, in the original principal amount of \$1,778.24, which lien is recorded in the Cumberland County Registry of Deeds in Book 30991 at Page 330.
14. The United States of America, Department of the Treasury-Internal Revenue Service claims, or may claim, an interest in the Property by virtue of a revenue tax lien against Luz E. Tenpenny, in the original principal amount of \$19,238.38, which lien is recorded in the Cumberland County Registry of Deeds in Book 31706 at Page 107.
15. The United States of America, Department of the Treasury-Internal Revenue Service claims, or may claim, an interest in the Premises by virtue of revenue tax lien against Luz E. Tenpenny, in the original principal amount of \$12,216.69, which lien is recorded in the Cumberland County Registry of Deeds in Book 33669 at Page 340.
16. Mike McDonald Heating Service LLC, claims, or may claim, an interest in the Premises by virtue of a judgment lien against Luz E. Tenpenny, in the original principal amount of \$760.76, recorded in Book 32987 at Page 304 of the Cumberland County Registry of Deeds.

REFORMATION OF MORTGAGE

17. Plaintiff repeats and re-alleges the allegations contained in the above paragraphs as if stated herein in full.
18. The real property subject to this reformation action is 6 W Commonwealth Drive, Portland, Cumberland County, Maine (the "Premises").
19. Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmeralda Tenpenny did not sign the Mortgage, and her name was not listed in the granting clause of the Mortgage; only Stanley Tenpenny is listed as a mortgagor under the Mortgage, even though both Tenpennys/both Defendants own the Premises.

20. There is no deed found of record through the current date in the Registry of Deeds, removing Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny from titled ownership of the subject real estate. Furthermore, Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny has not released or otherwise relinquished her interest in the real estate, and was, at the time of the granting of the Mortgage, a titled owner thereof.
21. Therefore, at the time of the granting of the subject Mortgage, both Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny were owners of the Premises, and as such are both required to sign the Mortgage such that all then-owners were signatory thereto.
22. Upon information and belief, it was at all relevant times the intent of both Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny to grant a full, undivided interest as mortgagors, and the intent of the predecessor-in-interest to Plaintiff to accept as mortgagee, a Note, and Mortgage securing that Note, regarding the Premises, via a good, accurate, and complete description thereof of all titled land owners.
23. Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny owned, and continue to own, the Premises, at the time of the Note and Mortgage, through the current date. Upon information and belief, the Mortgage omitting Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny as mortgagor is believed to be an inadvertent error.
24. The failure to have Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny's name listed as a mortgagor, and failure to have her sign the mortgage instrument, was a mutual mistake and/or unilateral mistake of the parties and was solely due to inadvertent error by the originating mortgagee and inadvertent error by the Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny.
25. It would be inequitable to allow Stanley and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny to now claim an unencumbered interest in the real property, when, at all relevant times, it was not the intent of any party to convey or accept same, and that Plaintiff is not entitled to such interest due to the inadvertent error in failing to insert Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny's name on the mortgage instrument and have her sign the mortgage document.
26. Unless the Court grants the relief for reformation demanded herein, there will be a substantial risk that involuntary liens and encumbrances will accrue against the Premises that is now owned by Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny.
27. Granting reformation of the Mortgage on the terms demanded in this action will serve the interest of justice by conforming the Mortgage on the Premises to use a full and correct

legal description of the Premises of the realty now owned by the Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny, and will be consistent with the Defendants' original intention in granting the Premises as security, and Plaintiff's and its predecessor's intention, by accepting as collateral for a loan, by which loan Defendants directly benefitted.

28. Further, that granting reformation as prayed for hereunder, will avoid an unintended benefit to any subsequent mortgagee that might claim a priority lien over the Premises by virtue of the failure (of the original mortgagee) to include the names of titled land owners of the secured premises.
29. Plaintiff is the current Mortgagee.
30. Plaintiff is entitled to judgment as a matter of law and equity to reformation of the Mortgage on the terms demanded in this action.
31. Neither Stanley Tenpenny nor Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny will suffer any prejudice as a result of the relief sought hereunder as, upon information and belief, such reformation will be consistent with the original intention in granting the full Premises as security.

WHEREFORE, Plaintiff prays that this Honorable Court:

- a. Determine that the failure to include Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny in the granting clause and the failure to have Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny sign the mortgage instrument, was done so by inadvertent error;
- b. Determine that, due to such inadvertent error, and, further, that due to such error the interests of justice and equity are best served by reformation of the Mortgage, and therefore, the Mortgage ought to be reformed to correct such error and to maintain the interests of equity and of justice;
- c. Order that, upon the finding of such inadvertent error and mutual mistake and/or unilateral mistake the Mortgage be and thereby is reformed, to add Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny to the granting clause, and to decree that the Mortgage instrument is reformed to be as if Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny had subscribed her signature thereto simultaneously with Stanley Tenpenny's;
- d. Order that, any purported mortgage(s) subsequent to the subject Mortgage which stated that they encumber the interest of both Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny, the subject Mortgage be and thereby is a senior lien over such other mortgage(s),

and that it would an injustice and confer an unintended benefit on such subsequent mortgagees to find otherwise;

- e. Authorize undersigned counsel under Rule 70 of the Maine Rules of Civil Procedure to make any required recordings to perform the reformation of the Mortgage as demanded, to wit: recordation of the judgment granting the relief prayed for hereunder is and shall be one and the same as if re-recording a mortgage instrument which had been granted by and executed by both Defendants Stanley Tenpenny and Luz Esmeralda Tenpenny a/k/a Luz E. Tenpenny a/k/a Esmerelda Tenpenny, coincident with the Mortgage, and/or such other recordings as this Court may require;
- f. Grant such other and further relief as the Court may determine proper.

NOVEMBER 9, 2021

Plaintiff,
By its Attorneys,
BROCK & SCOTT PLLC

/s/ Sonia J. Buck
Sonia J. Buck, Esq., Bar No. 009847
Sonia.Buck@brockandscott.com
BROCK & SCOTT, PLLC
1080 Main Street, Suite 200
Pawtucket, RI 02860
Phone: 401-217-8762

EXHIBIT A

LEGAL DESCRIPTION

06CMA0177

THAT CERTAIN LOT OR PARCEL OF LAND WITH THE IMPROVEMENTS THEREON SITUATED IN THE CITY OF PORTLAND, COUNTY OF CUMBERLAND AND STATE OF MAINE AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A CERTAIN LOT OR PARCEL OF LAND WITH THE BUILDINGS THEREON, SITUATED IN SAID PORTLAND, AND BEING LOT NO. 33 AS SHOWN ON PLAN OF HOMESTEAD ACRES EXTENSION, WHICH PLAN IS RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 44, PAGE 14, TO WHICH REFERENCE MAY BE HAD FOR A MORE PARTICULAR DESCRIPTION.

Complete the caption that applies to your case:

☐ Plaintiff/Petitioner
US BANK TRUST NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR VRMTG ASSET TRUST
V
Defendant/Respondent
LUZ ESMERALDA TENPENNY A/K/A
LUZ E. TENPENNY A/K/A
ESMERELDA TENPENNY;
STANLEY TENPENNY
Other Party

"X" the court for filing:

☒ Superior Court ☐ ~~District Court~~
☐ Unified Criminal Docket
☐ Supreme Judicial Court

County: CUMBERLAND

Location (Town): PORTLAND

Docket No.: PORSC-RE-2021-95

Regarding Complaint for Reformation of Mortgage

NOTICE REGARDING ELECTRONIC SERVICE

NOTICE TO PARTIES: All parties who are represented by an attorney are subject to the requirements of Electronic Service under Rule 5 of the Maine Rules of Civil Procedure, and Rule 49(d) of the Maine Rules of Unified Criminal Procedure.

OPT IN: If you do not have an attorney, papers that must be served on you by other parties in this case will be sent to you through the regular mail to your address of record. But you have a choice to allow other parties to serve you by sending documents electronically to your designated email address.

PLEASE NOTE: Any electronic service that you opt into applies only to papers served on you by other parties. It does not apply to documents that are sent to you by the court or documents that you file with the court.

Even if you opt in to allow service by email, you can only send documents to the other parties by email if (1) they also opt in by completing this form, and (2) you can scan and create .pdf files of documents.

If you choose not to opt in, you do not need to do anything. If you would like to receive papers electronically, you must meet the requirements set forth below. Check the appropriate box(es), sign, and mail or email the form to all other parties in the case. Do not file this form with the Court.

☐ **Electronic Receipt:** I choose to OPT IN to allow other parties to email me documents in this case. I have reviewed and meet all of the following electronic receipt requirements:

- ☐ I have a trusted email account and I have daily access to this account;
- ☐ I understand that I will receive time-sensitive documents through this email address including documents that may require me to take action in this case;
- ☐ This email account has available electronic storage of at least 1 gigabyte;
- ☐ This email account accepts emails with attachments of up to 10 megabytes; and
- ☐ I will be able to maintain this email account throughout this case.

Date (mm/dd/yyyy): _____

Signature of Self-Represented Party

(You do not have to print and sign this form. Typing your name above after /s/ will be accepted as an electronic signature.)

Print name: _____

Print email address: _____

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